

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 06-0040
Individual Adjusted Gross Income Tax
For the Periods Ending December 31, 1998 through December 31, 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Individual Adjusted Gross Income Tax

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-1(b).

Taxpayer maintains that the assessment is being protested because the income that has been used in the Department's calculations is incorrect.

II. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent (10 percent) negligence penalty.

STATEMENT OF FACTS

The taxpayer is the owner and operator of a business in Elkhart, Indiana. The Retail establishment sells gas, prepared snack food, and beverages. The taxpayer also operates a car wash service. The audit adjustments were made based upon the best information available to the Department. The taxpayer provided no records and did not file Federal or State individual tax returns for the years at issue. The Department estimated the taxpayer's net income using information obtained from the taxpayer's ST-103 returns and the Almanac of Business and Industrial Financial Ratios (36th Annual Edition, 2005). The taxpayer's total revenue was determined by totaling the sales figures reported on the ST-103 for the years at issue. For the periods where no returns were filed, the Department estimated the gross sales amount for the month by taking the average of the reported gross sales for the months filed in that year. To determine the estimated expenses, the taxpayer's estimated sales were multiplied by the percentages for average expenses as listed in the Almanac of Business and Industrial Financial Ratios. These estimated expenses were subtracted from total revenues to determine net income. The Department also estimated the amount of wages earned in Indiana by the taxpayer by using the ratios obtained from the Almanac of Business and Industrial Ratios. The taxpayer protested in a timely manner. At hearing the taxpayer provided individual income tax returns for the years

DISCUSSION

I. Individual Adjusted Gross Income Tax

Taxpayer contends that the assessment is being protested because the income that has been used in the calculations is incorrect.

The Department based the proposed assessments upon the best information it had available. Indiana law provides as follows: “If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall* make a proposed assessment of the amount of the unpaid tax due on the basis of the best information available to the department.” IC 6-8.1-5-1(a) (*Emphasis added*).

In the taxpayer’s case, the Department believed that the “best information available” consisted of the records provided by the Internal Revenue Service. After obtaining that information, the Department fulfilled its legal responsibility to make a “proposed assessment.” Indiana law provides that, “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is wrong.” IC 6-8.1-5-1(b).

At hearing the taxpayer provided individual tax returns (IT-40 RNR) with no supporting documentation for the years 1999, 2000, and 2001. The taxpayer requested additional time in which to provide tax returns for the remaining years. As of the date of issuance of this Letter of Findings no additional information was forthcoming.

FINDING

Taxpayer’s protest is denied.

II. Tax Administration-Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent (10 percent) negligence penalty that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code 45 IAC 15-11-2 further provides:

(b) “Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow

instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Under IC 6-8.1-10-2.1, if the taxpayer fails to pay the full amount of tax due on the tax return on or before the due date of the return, the tax due is subject to penalty and interest. Therefore, the 10 percent penalty plus interest was applied.

FINDING

Taxpayer's protest is denied.